



**TRANSPORT  
SCOTLAND**  
CÒMHDHAIL ALBA

# **Statutory Guidance from the Scottish Ministers to the Office of Rail and Road 2024**

1. This Guidance is issued under the Railways Act 1993. Section 4(5)(aa) of the Act requires the ORR, in exercising its functions (other than safety), to have regard to any general guidance given to it by the Scottish Ministers about railway services wholly or partly in Scotland or about other matters in regard to Scotland that relate to railways. This document provides that Guidance, revoking and replacing the guidance issued by the Scottish Ministers on 11 June 2018.
2. Our vision is for a sustainable, inclusive, safe and accessible transport system helping deliver a healthier, fairer and more prosperous Scotland for communities, businesses and visitors. This vision is underpinned by four interconnected priorities, that the transport system:
  - Reduces Inequalities
  - Takes Climate Action
  - Helps Deliver Inclusive Economic Growth
  - Improves our Health and Wellbeing.
3. At the heart of our strategic approach to transport is the recognition that we need to enable a step-change in behaviour through the provision of attractive, affordable, accessible and sustainable travel options. Rail is central to this with a focus on a safe, high performing and efficient railway.
4. Our priorities for the rail sector in Scotland are:
  - Safe, robust and reliable services** capable not just of retaining existing passengers and freight but of attracting new custom, including from other modes of transport, responsive to passenger and commercial demands and providing valuable connections between cities and regions;
  - Optimum use of capacity and capability** through the most effective use of the available rail capacity and resource to secure required services with high levels of performance and modernisation;
  - Meeting the “net cost” challenge for the network and delivering Value for Money** through a transparent approach in determining and managing efficient costs to achieve Value for Money for the taxpayer, fare-payer and the rail freight customer, recognising their financial contribution to delivery of the service they require;
  - Effective integration** through co-ordination and co-operation between rail operators and rail infrastructure management, and between rail and other transport modes;
  - Inclusive and sustainable economic growth** through targeted investment to help reduce inequality and increase economic growth through the use of local products and labour, more efficient use of low carbon or net zero energy and contribution to the circular economy;
  - Achieving net zero and climate change adaptation and resilience** by promoting the use of sustainable rail services for more passengers and freight customers and through delivery of adaptations in response to climate change, greater resilience and preparedness for severe weather events and responsible environmental stewardship.

5. Specifically in relation to freight, we want to see a competitive, sustainable rail freight sector playing an increasing role in Scotland's economic growth by providing a safer, greener and more efficient way of transporting products and materials.
6. The railway in Scotland needs a strong, independent and assured regulator to help it to reach its full potential. Key to this, is the ability of the ORR to adapt its approach in order to meet the needs of rail users in Scotland and the policy requirements of the Scottish Government as primary specifier and funder, including where these may differ from other parts of the GB network. Therefore, in discharging its duties, the ORR should have full regard to Scottish Government strategies, policies and objectives either published or otherwise notified by the Scottish Government, with implications for rail, throughout Control Period 7 (CP7), from April 2024 to March 2029. This should include strategies and policies which are wider than specifically rail, such as the Scottish Government's economic and environmental strategies.
7. The ORR published its Final Determination on 31 October 2023, wherein it translated the High Level Output Specification (HLOS) into reasonable requirements of Network Rail to achieve within the funding made available as advised in the Statement of Funds Available. We strongly encourage the ORR to use all powers available to it in ensuring that the Final Determination is delivered in full and to budget throughout CP7.
8. Our requirements of Network Rail are clearly laid out in the HLOS and will not be repeated here, with one important exception given its importance:

Scottish Ministers require that the outputs of the network will be maintained in such a manner as to enable ScotRail Trains Ltd. to meet a Public Performance Measure (PPM) target of 92.5% for every year of CP7.
9. Safety is paramount, and there is therefore a specific derogation from the 92.5% target for trains where delays are caused by the need for speed restrictions during periods of severe weather, or trains have been delayed in order to permit connections from other late running trains or ferries.
10. The 92.5% PPM target is therefore pragmatic and appropriate. We strongly encourage the ORR to bring **all regulatory levers to bear** to hold Network Rail to account for delivering its contribution to the 92.5% Scotland train performance measure, recognising the derogation mentioned above allows for certain events to be excluded from achievement of this target.

## Scotland's Railway

11. Primarily as a consequence of Executive Devolution under the Railways Act 2005, the Scotland route is at a more advanced stage in terms of asset sustainability and performance than the other routes on the GB Network. This has been in part achieved through closer working and greater integration on the Scotland route, including through the ScotRail Alliance, and the Team Scotland approach.

12. We are of the view that railway operations are most effective and most efficient where the interface between the service providers (and their control of costs) and the service users is closest. While respecting that in exercising its functions the ORR is governed by various statutory duties (which it must take into account when making decisions), the Scottish Ministers expect the ORR to continue to support the further improvement on the Scotland route by:
- a. ensuring that where ORR's decision making processes and policy development has the potential to impact Scotland, it acts in the best interests of the Scottish route and its users. The ability to adapt should not be overridden by a preference for GB-wide uniformity;
  - b. recognising that the Scotland route has constitutional as well as operational devolution, and therefore the priorities which drive Network Rail Scotland's policies, actions and behaviours on the route may be legitimately different to other parts of the GB network;
  - c. supporting greater decentralisation of appropriate agreed decision-making processes, delivery functions and resources of Network Rail in Scotland in the best interests of users, funders and the Scottish economy;
  - d. ensuring that the regulatory frameworks and incentives put in place are suited to maximising alignment between rail delivery partners, and unnecessary complexity is avoided.

## Value for money

13. Under Section 4(5)(ab) of the 1993 Act the ORR is "to give what appears to it to be appropriate weight to the extent (if any) to which the guidance relates to matters in respect of which expenditure is to be or has been incurred by the Scottish Ministers".
14. Under section 4(5C) of the 1993 Act, in performing its duties the ORR must also have particular regard to the interests of those using or who may use railway services, the interests of those providing railway services, the interests of those funding railway services and the general public.
15. We expect the ORR to have full regard to the funds available to the Scottish Ministers to support the rail industry and the requirement of the Scottish Government to provide that support within its allocated resource and capital budgets, while securing best value for money from that public expenditure.
16. If the ORR considers that it is necessary to exercise or intends to exercise its duties or undertake an activity in a way that is likely to have a negative or positive, material, financial consequence for Scottish public funding of railways, then we expect the ORR to notify us as soon as is reasonably practicable so that we may make representation to the ORR. In such circumstances, we may seek to conduct a review to ensure consistency of the approach taken or to be taken by the ORR against the HLOS or any policy, strategy or objective in respect of the rail network in Scotland.

## Managing Scotland's railway assets

17. A substantial proportion of the rail industry costs relates to the maintenance and renewal of the network assets. Therefore we have a very clear expectation that the ORR will ensure that Network Rail's policies and strategies for the Scotland route are developed in accordance with best practice and in a timely, efficient and economical manner so as to satisfy the reasonable requirements of Scottish Ministers for rail in Scotland by delivering best value in the use of public funds.

## Working Together for the People of Scotland

18. We welcome the good base that the ORR has in Scotland, and the strong working relationship with Transport Scotland which we wish to maintain and build on. We request that the ORR continues to monitor its resourcing, ensuring that it can continue to provide the required capacity and capability to discharge its functions in Scotland in line with this Guidance.

19. Section 51(2) of the Railways Act 2005 imposes a duty on the ORR to comply with every reasonable requirement of the Scottish Ministers to provide information, advice or assistance to us in connection with our functions or activities in relation to railways or railway services. We therefore expect the ORR to share information and, critically, provide analysis, as soon as is reasonably practicable about anything that is likely to be material to operational delivery, policy development or to financial planning.

20. In particular, we expect the ORR to ensure that we receive regular, timely, transparent and reliable reports on Network Rail performance, operational and financial, disaggregated to Scotland route level, to ensure that an accurate understanding of the network is maintained at all times.

21. In recognising that both Network Rail and the ORR is accountable to the UK Parliament and not the Scottish Parliament, though £4.2 billion of investment in supporting the network is committed over the five years of CP7 by the Scottish Ministers who are accountable to Scottish Parliament, we expect the ORR to support Scottish Government's scrutiny of Network Rail's delivery of the HLOS requirements, in addition to conducting its own scrutiny.

22. In particular we expect the ORR:

- a) to give evidence to the Scottish Parliament when requested to do so;
- b) to maintain, via the Chair, a close and transparent relationship with Scottish Ministers;
- c) to engage with Transport Scotland's governance arrangements for receiving assurance directly from Scotland's Railway that outputs specified in HLOS are being delivered in full and within budget;
- d) to scrutinise detailed transparent information from Network Rail in respect of progress in achieving outputs specified in HLOS and report views on performance and application of regulatory levers as necessary to ensure outputs are delivered.



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Published by Transport Scotland, May 2024

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